

June 1, 2007

Mr. Kurt Spiegel
Senior Field Representative
Washington Federation of State Employees
3516 South 47th Street, Suite 102
Tacoma, WA 98409-4437

RE: Mike Sturman v. Department of Labor & Industries (L&I)
Allocation Review R-ALLO-06-010 (Case 06AL0028 on remand from PRB)

Dear Mr. Spiegel:

On March 2, 2007, I conducted a Director's review meeting at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning the allocation of Mr. Sturman's position. Present at the Director's review meeting were you and Mr. Sturman; Kurt Kaufold, Shop Steward; Sandra Riggle, Human Resource Consultant representing the Department of Labor & Industries (L&I); Dan McMurdie, Construction & Specialty Services Program Manager; and Anne Soiza, Statewide Compliance Manager.

Background

On September 20, 2005, Mr. Sturman submitted a Position Description Form (PDF) to L&I's Human Resources Office, requesting that his Safety and Health 2 (S&HS 2) position (#2744) be reallocated to a Safety and Health 3 (S&HS 3) position. On October 28, 2005, Human Resource Consultant Sandra Riggle issued an allocation determination, stating Mr. Sturman's position was properly allocated to the S&H 2 classification. Mr. Sturman was working in the Washington Industrial Safety and Health Act (WISHA) Services Division at the time of his request.

In her determination, Ms. Riggle concluded Mr. Sturman's position fit the S&HS 2 class because management had indicated his position was responsible for conducting journey level inspections. Ms. Riggle further concluded his position had not been assigned or designated in writing by the WISHA Services Division's Assistant Director to conduct inspections on an assigned industry-wide or high-hazard industry basis.

On November 28, 2005, the Department of Personnel (DOP) received Mr. Sturman's request for a Director's review of L&I's allocation determination. On March 31, 2006, DOP's Personnel Hearings Officer, Paul L. Peterson, issued a determination, which concurred Mr. Sturman's position should be allocated as an S&HS 2. On May 1, 2006, Mr. Sturman appealed Mr. Peterson's decision to the Personnel Resources Board (PRB).

On October 12, 2006, the parties convened for a hearing before the PRB. At the outset of the hearing, Mr. Sturman stated his belief he had not been given due process during the Director's level review and that information he submitted during the review was not included in the record forwarded to the Board. Additionally, both parties agreed Mr. Peterson had not provided them with copies of additional information submitted by the other party and that no subsequent meeting had occurred for them to explain the additional documentation. Consequently, the Board remanded Mr. Sturman's appeal to the Director's Review Program for a thorough and complete review and determination.

Summary of Mr. Sturman's Perspective

Mr. Sturman contends he has been assigned and performed higher-level work comparable to the S&HS 3 level since at least 2000. Mr. Sturman further contends he has been assigned to conduct complex enforcement inspections in high hazard industries, including maritime (marine & dock) and construction a majority of the time. Additionally, Mr. Sturman points out that his name appears on a list of qualified inspectors for the maritime industry, and he asserts he has served as a lead and trained other inspectors for S&HS 3 level work. Mr. Sturman asserts his Employee Development and Performance Plans (EDPPs) relevant to the timeframe for this request, as well as emails from his supervisor and another compliance supervisor, confirm he has performed duties as a marine and dock specialist. As a result, Mr. Sturman believes he meets the definition and second distinguishing characteristic relating to safety inspections in high hazard industries and contends his position should be reallocated to the S&HS 3 classification.

Summary of L&I's Reasoning

While L&I agrees Mr. Sturman is qualified to conduct complex, higher-level inspections in the high hazard industries of maritime and construction, L&I asserts his position has not been assigned those duties a majority of the time. L&I further contends Mr. Sturman has not received the required written designation from the Assistant Director of WISHA Services to conduct safety inspections on a high hazard industry basis. Although L&I acknowledges that Mr. Sturman's name appears on the regional list of qualified inspectors for maritime industries, L&I states he has not been assigned or been given specific written designation to perform those specific duties. Rather, L&I asserts Mr. Sturman's position has been assigned journey-level inspection work a majority of the

time. Without the written designation, L&I asserts Mr. Sturman does not meet the distinguishing characteristics envisioned in the S&HS 3 class specification.

Director's Determination

This position review was based on the work performed for at least the six-month period prior to September 20, 2005, the date Mr. Sturman submitted his reallocation request to L&I's Human Resources Office.

As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review meeting, and the verbal comments provided by both parties. I also considered information submitted by both parties subsequent to the Director's review meeting. Based on my review and analysis of Mr. Sturman's assigned duties and responsibilities, I conclude his position is properly allocated to the Safety & Health Specialist 2 classification.

Rationale for Determination

The primary issue is whether Mr. Sturman's position meets the definition of performing senior-level duties as an S&HS 3 and whether he meets the following distinguishing characteristic:

Conducts safety inspections on an assigned industry-wide or high hazard industry basis as designated in writing by the Assistant Director, WISHA Services Division.

In reviewing the Position Description Form (PDF) submitted by Mr. Sturman, which Ms. Riggle considered when making her determination, Mr. Sturman characterizes the enforcement inspections he conducts as "complex and high profile" (Exhibit 1). Although Ms. Riggle signed the PDF, there are no signatures from Mr. Sturman's supervisor or department head. In her allocation determination, Ms. Riggle noted that management had indicated Mr. Sturman was responsible for conducting journey-level inspections (Exhibit 3). In a follow-up email to Mr. Peterson, Ms. Riggle also wrote, "[m]anagement's review did not find that Mike was involved in complex inspections or that he was designated by the Assistant Director of WISHA as a Marine and Dock Specialist" (Exhibit E). The Washington State Classification and Pay Guide describes "journey-level" as the "working or fully-qualified" level, which is consistent with the definition of an S&HS 2. The S&HS2 does not address the issue of high hazard industry.

After the Director's review meeting, I emailed all parties to see if a PDF with both Mr. Sturman's and his supervisor's signatures existed. I received an August 2006 PDF, which is subsequent to the time of this request and also unsigned, though Mr. Sturman's supervisor and compliance manager wrote a note indicating the original had been signed

(Exhibit L-1). I also received a Classification Questionnaire (CQ) for Mr. Sturman's position dating back to March 2002 (Exhibit L-2). The CQ indicates Mr. Sturman performs enforcement activities at the journey level but does not indicate any particular industry. With regard to conducting inspections, the CQ states:

Leads the physical inspection walk-around with management and employee representatives, observes work operations and conditions noting any hazardous conditions or unsafe work practices and takes appropriate actions. Interviews affected employees to determine length of exposure and proximity to the hazards.

I also reviewed emails from Mr. Sturman's supervisor, Frank Marshall, as well as EDPPs for Mr. Sturman, relevant to the time of this request, that confirmed Mr. Sturman had been assigned inspections in the construction industry a majority of the time and had conducted inspections as a marine and dock specialist. In the EDPPs, Mr. Marshall intimated Mr. Sturman's role as a marine and dock specialist when he wrote, "[t]he new training helped prepare [Mr. Sturman] for a more expanded role as a Marine and Dock inspector, with a specialty in diving" (Exhibit 14). Mr. Marshall also wrote, "[k]eep working in Marine and Dock industries, M&D terminals, Fish farms, ship building and breaking industries, Diving industry, and training new Marine and Dock employees in how to inspect in this specialized industry" (Exhibit 15). Further evidence of Mr. Sturman's role in training other marine and dock inspectors is reiterated in a September 16, 2005 email from Mr. Marshall to Mr. Sturman (Exhibit 13). Finally, in an email dated December 2, 2005, Nickolas Stilnovich, a supervisor from another region, indicated Mr. Sturman had conducted marine and dock inspections over the previous year in the absence of a marine and dock inspector in his region. Mr. Peterson did not review the documentation in this paragraph at the time of his review.

While the duties on the CQ are consistent with the S&HS 2 class, the documentation in the above paragraph lends support to Mr. Sturman's characterization of his position as a maritime specialty safety and health compliance officer. The Washington State Classification and Pay Guide notes that at the senior-level, positions can also be described as specialist, lead, trainer, complex, in-depth or in-charge worker. Further, the "complex" level requires the use of a wide variety of rules, processes, materials, or equipment that require an application of specialized knowledge or skills. Not only had Mr. Sturman been assigned safety inspections requiring specific, marine and dock industry knowledge, he was also asked to train and back up individuals who later became S&HS 3s. I acknowledge that not every position dealing with marine and dock will automatically reach the S&HS 3 level, as indicated by the various levels described in WISHA Regional Director 22.80 (Exhibit H). However, when weighing the above documentation in Mr. Sturman's case, I conclude his assigned duties and responsibilities with regard to the marine and dock industry meet the senior-level definition of an S&SH3.

Next, I considered the distinguishing characteristic at the S&HS 3 level that talks about the need for written designation by WISHA's Assistant Director. During the Director's review meeting we discussed this characteristic at length. While you, Mr. Sturman, and Mr. Kaufold take the stance that the "written designation" applies to the industry rather than position, I agree with L&I that the designation really refers to the position. Further, it is undisputed that both construction and maritime industries are considered high hazard industries (Exhibit 5). With regard to the Assistant Director's written designation, I considered the following prior Personnel Appeals Board (PAB) decisions:

Consistent with our decisions in Griffith v. Dep't of Ecology, PAB Case No. ALLO-00-0016 (2000) and Stash v. Dep't of Ecology, PAB Case No. ALLO-00-0001 (1999), when a classification specification requires written designation, we must look for a document that confers such a designation upon the position in question. This written documentation can be a formal agency designation form, an approved CQ or other written documentation Davis v. Dep't of Ecology, PAB Case No. ALLO-02-0033 (2000).

While previous PAB cases do support a requirement for written designation when identified on a class specification, the totality of other documentation in Mr. Sturman's case confers such a designation exists with respect to marine and dock. Specifically, and in addition to Mr. Sturman's name appearing on a fully qualified regional listing of inspectors/consultants for maritime industries (Exhibit 9), Ms. Riggle conveyed the Assistant Director for WISHA Services' sentiment regarding the level of expertise required for maritime specialist positions working in enforcement in the following email dated July 28, 2005 (Exhibit 10):

I have received notification from the acting Assistant Director for WISHA that identified and designated bona fide maritime specialists positions in enforcement as requiring S&HS3 level expertise. Therefore, your [Carlito Hidalgo] position will be reallocated up to the S&HS3 level effective August 27, 2004.

...

Although the email was written to Mr. Hidalgo, it refers to "bona fide maritime specialists positions." Ms. Riggle's email to Mr. Peterson (Exhibit D) further demonstrates the intent and notes, in part:

. . . the department has designated several positions to be maritime SHS3's because the longshore/stevedore industry is a particular hazardous industry that requires knowledge from having worked on the docks—it is not something that can be easily trained to. . . . the industry is so specific

that we have determined it was necessary to designate certain positions as SHS3's and require that these positions have a higher knowledge and skill level to perform the more complex inspections at these places of work.

...

While I agree Mr. Sturman's duties and responsibilities relating to marine and dock inspections meet the definition and distinguishing characteristics at the S&HS 3 level, a position's allocation is determined by the **majority of work** performed. Since Mr. Sturman's supervisor, Mr. Marshall, affirmed that 86% of the inspections conducted in 2005 related to the construction industry (Exhibit 11), I reviewed the list of inspections provided by Mr. Sturman and concluded most of them had been identified as "planned" (Exhibit 17). WISHA Regional Directive 2.10 informs inspectors to record the word "planned" in Box #24 of an IMIS form after conducting an inspection that is considered "programmed" (Exhibit 6, page 3). WISHA Regional Directive 2.15 notes, in part:

Inspections within the construction industry are to be considered 'programmed' inspections unless they are fatality/catastrophe investigations or are initiated in response to specific complaints or referrals. All such programmed inspections are to be comprehensive hygiene or safety inspections . . . (Exhibit 7).

In determining whether the comprehensive construction inspections conducted by Mr. Sturman were considered journey-level, I again reviewed WISHA Regional Directive 22.80, which describes *comprehensive* inspections as being performed at the *journey-level*. Although Regional Directive 22.80 relates to maritime, the structure of identifying levels of work lends support to L&I's assertion Mr. Sturman conducts journey-level enforcement inspections the majority of the time, with the exception of the marine and dock inspections referenced earlier.

There is no question Mr. Sturman is qualified to conduct higher-level, complex enforcement inspections or that the inspections he conducts are in high hazard industries. However, a position's allocation is based on the majority of assigned duties and responsibilities and how they best fit the available job classifications. Even though Mr. Sturman conducts some inspections at the S&HS 3 level, the majority of work has been assigned at the journey-level. Therefore, the Safety and Health Specialist 2 classification best describes Mr. Sturman's position #2744.

Appeal Rights

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons
Director's Review Supervisor
Legal Affairs Division

c: Sandi LaPalm, L&I
Lisa Skriletz, DOP

Enclosure: List of Exhibits